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IN THE

Supreme Court of the United States

October Term, 1954

No.

JAMES SHELDON WALKER,

Petitioner,

—vs—

UNITED STATES OF AMERICA,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

Petitioner, James Sheldon Walker, prays that a Writ of Certiorari issue from this Court to review the judgment of the United States Court of Appeals for the Fifth Circuit entered in the above-entitled case on November 16, 1954.

CITATIONS TO OPINIONS BELOW

The memorandum opinion of the District Court for the Northern District of Florida (R. 9-14 is reported in 121 F. Supp. 458. The opinion of the Circuit Court of Appeals for the Fifth Circuit (R. 21-24) printed in Appendix A hereto, *infra,* page 11, is unreported.

JURISDICTION

The judgment of the Court below, sought to be reviewed, was entered on November 16, 1954 (R. 25). A timely petition for rehearing filed December 4, 1954 (R. 26-30) was denied on December 22, 1954 (R. 32). The jurisdiction of this Court is invoked under 28 U.S.C., Sec. 1254 (1) and Rule 22 (2) of this Court.

QUESTION PRESENTED

May the scope of the Federal Civil Rights Act, 18 U.S.C., Sec. 242, be extended so as to lawfully authorize a federal criminal prosecution of a captain of a State convict camp, charged with the duty of confining, disciplining and working State felons, for making an assault on a State convicted felon whom he has in his lawful charge and custody while said State felon is serving a State imposed sentence, where the Indictment charges only an assault and battery under State law and is absent and silent any allegation of a specific intent on the part of the accused captain to deny the State felon a federal secured right, or any allegation as to the reason for the alleged assault?

STATUTE INVOLVED

The statutory provision involved is the Federal Civil Rights Act, 18 U.S.C., Sec. 242, and, insofar as material here, provides as follows:

> "Whoever, under color of any law, statute, ordinance, regulation or custom, willfully subjects any inhabitant of any State, Territory or District to the deprivation of any rights, privileges, or immunities

secured or protected by the Constitution or laws of the United States * * * * shall be fined not more than $1,000 or imprisoned not more than one year, or both."

STATEMENT OF THE CASE

On September 26, 1952, an Indictment (R. 3) in 28 Counts[1] was returned and filed in the United States District Court for the Northern District of Florida, charging Petitioner with violations of the Federal Civil Rights Act, 18 U.S.C., Sec. 242. The jurisdiction of the District Court was invoked because the Indictment is based on alleged criminal violation of said Federal Civil Rights Act committed within the Northern District of Florida. In each Count of the Indictment it is alleged that—

> Petitioner was an officer, agent and employee of the State of Florida, in charge of a Florida State prison camp, and, while engaged in the discharge of his authorized duties to confine, discipline, supervise and work State prisoners, did willfully, unlawfully and wrongfully and in the abuse and excess of his lawful authority, and under color of law, statutes and regulations of the State of Florida, subject a named State felon prisoner (inhabitant) committed to Petitioner's charge, custody and control in said prison camp, to the willful deprivation of the following rights secured and protected to said prisoner by the Constitution and laws of the United States, namely, the right to be secure in his person; to be immune from illegal assault and battery, and not to be assaulted, by the Petitioner and any other persons under Petitioner's control and direction; and the right and privilege not to be subjected to punish-

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[1] All Counts being identical except as to date and name of prisoner, by Stipulation of the parties (R. 16), the record is limited to Counts 1 and 12 (R. 3-6), and remaining Counts omitted as not essential to the determination of the issue.

ment without due process of law, by willfully, unlawfully and wrongfully beating, bruising, wounding, lacerating, cutting and injuring the person and body of said State prisoner, in violation of 18 U.S.C., Sec. 242. (R. 3-6)

On December 1, 1952, Petitioner filed a Motion to Dismiss the Indictment and each Count thereof (R. 6) challenging the legal sufficiency thereof to charge a federal criminal offense under 18 U.S.C., Sec. 242, Federal Civil Rights Act, and in support thereof, asserted, inter alia, failure of the Indictment to allege the essential and material elements of (a) specific intent on the part of Petitioner to deprive the named prisoner of a secured federal right, and (b) the reason for the alleged assault; and that the violation, as alleged, constituted only an assault and battery under State law (R. 6-9). On May 24, 1954, the District Court, pursuant to said Motion to Dismiss, rendered and filed a memorandum decision (R. 9-14), and in conformity therewith, entered an order dismissing the Indictment and each Count thereof for failure to charge a federal offense (R. 14-15). On appeal by Respondent, the Court of Appeals below entered a judgment reversing the judgment of the District Court (R. 25), and by its Opinion (R. 21-24), Appendix A, *infra,* page 11, cited, for comparison, the case of *Jones v. United States,* 207 F. (2d) 785[2], and held that although the Indictment in the instant case did not allege a specific intent on the part of Petitioner to deliberately deny the named prisoner a specific federal se-

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2. For convenience, the decision in the *Jones* case, supra, is printed in Appendix B, *infra,* page 15. The Jones case originated in the Southern District of Florida and can be considered a companion case to the instant case in that both cases grew out of the same federal investigation of State prison camps in Florida. See: District Court's decision (R. 9-14).

cured right, as alleged in the Information in *Jones v. United States,* supra,[3] nevertheless the allegations in the instant Indictment, being in legal substance the same as in the Information in *Jones v. United States,* supra, were sufficient to charge the federal offense; and further held that the reason for the alleged assault, being immaterial, need not be alleged at all.

REASONS FOR GRANTING THE WRIT

1. The issue involved herein is of great national importance. It directly affects each of the States of this Union in the exercise of their exclusive power, under the Tenth Amendment to the Federal Constitution, to control and regulate the internal discipline of their penal institutions. Our research fails to disclose any reported case, except the companion Florida case of *Jones v. United States,* supra, Appendix B, *infra,* page 15, where the federal government has prosecuted, or attempted to prosecute, under the aforesaid Federal Civil Rights Act, a State Prison official or agent for making an assault upon a *State convicted felon* who had been committed to the lawful custody and control of an authorized prison official or agent to be worked, disciplined and confined while *serving a State imposed sentence* in a State prison camp. The issue raised herein not only affects the accused, but vitally affects each and every other State official, agent or employee of the several States of the United States in the discharge of their duties and responsibilities in regulating the internal affairs of their respective State prisons. If the Indictment herein is held legally sufficient, then all assaults made, or discip-

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[3] The Information in the *Jones* case, supra, specifically alleged the reason and intent for the assault, *"for having escaped"* and *"for coercing information", "all for the willful purpose and intent to impose illegal summary punishment upon and to deprive"* the named prisoner, *"of his said constitutional rights".* See: *Jones v. United States,* supra.

linary punishment inflicted, by a State prison official upon confined State convicts, regardless of how justifiable, would automatically constitute a federal offense under the Federal Civil Rights Act, supra, and a conviction secured thereunder would have to stand even in the face of proof that the prisoner was disciplined or assaulted in an effort to stop a riot, prevent an escape, in self-defense, or other like matters of exclusive State concern. Not to compel the government to definintely and clearly allege the *reason* for the assault, coupled with an allegation of *specific intent* on the part of the State prison official to deny or deprive the State prisoner the benefit of a specific secured federal right, will result in all State prison officials, agents and employees, in the discharge of their official duties, not to dare use any force in disciplining unruly and difficult prisoners or to prevent an escape or riot, or repel an attack, for fear of being prosecuted for violating the Federal Civil Rights Act, supra. All of which will lend itself to the several States losing all control and power to enforce discipline among its prisoners, or flood the Federal courts with prosecutions for offenses cognizable only in State courts. Such was never the intent of Congress in enacting the Federal Civil Rights Act, supra.

2. The decision of the Court below is erroneous by virtue of being in direct conflict with the applicable decision of this Court in *Screws v. United States,* 325 U.S. 91. The aforesaid decisions are in conflict on the same matter of law. The Indictment in the *Screws* case, supra, under which the State official was convicted, was based upon the aforesaid Federal Civil Rights Act, which Indictment charged that the accused, under color of the laws of Georgia, *willfully* caused the assaulted victim to be deprived of certain named secured Federal rights and privileges by wrongfully assaulting and beating the vic-

tim to death. This Court, in reversing the conviction in the *Screws* case, was met with the claim that the *Federal Civil Rights Act,* 18 U.S.C., Sec. 52 (now Sec. 242), was unconstitutional by virtue of the statute lacking an ascertainable standard of guilt. In construing the aforesaid statute and rescuing it from the unconstitutional attack, this Court held that the statute was applicable *only* where the requisite bad *purpose* was present, thus requiring *specific intent* on the part of the accused to deprive the victim of a definite Federal right, and that the presence of bad purpose or evil intent, alone, may not be sufficient. This Court's announced necessary and essential ingredients, namely, the *purpose* of the assault and *intent* of the accused, to constitute a Federal offense under the statute are totally absent in the instant Indictment. As stated by this Court in the *Screws* case, at page 110:

> "We agree that when this statute is applied to the action of state officials, it should be construed so as to respect the proper balance between the States and the federal government in law enforcement. Violation of local law does not necessarily mean that federal rights have been invaded. The fact that a prisoner is assaulted, injured, or even murdered by state officials does not necessarily mean that he is deprived of any right protected or secured by the Constitution or laws of the United States."

It is evident from the decision of this Court in the *Screws* case, supra, that to properly frame a charge under the statute, the essential and necessary elements of purpose of the assault and intent of the accused must be clearly spelled out on the face of the Indictment so as to foreclose any justification for the assault. Such is not the case here.

3. The decision of the Court below is equally in direct conflict with its own applicable decisions, on the same matter of law, in *Pullen v. United States* (5th) 164 F.(2d) 756 and *Clark v. United States* (5th) 193 F.(2d) 294 and *Jones v. United States,* supra. The Court below, in the *Clark* and *Pullen* decisions, supra, held that the paramount requirement to authorize prosecutions under the Federal Civil Rights Act, 18 U.S.C. Sec. 242, is that the accused must act with a *specific intent* to deprive the victim of his constitutional rights as *distinguished* from a mere *unlawful assault* inspired by personal malice, or must act with a *purpose* to deprive the victim of his constitutional rights; and that it is not a criminal offense under said statute if the *purpose* of the accused in assaulting the victim is unrelated to the disregard of any constitutional guaranty. As heretofore pointed out, the Indictment in the instant case does not allege that Petitioner acted with a *specific intent* to deprive the victim of any guaranteed right, nor does it allege the purpose of the assault, but merely alleges, at the most, an unlawful assault under State law.

In *Jones v. United States,* supra, Appendix B, infra, page 15, the Information is also based on alleged violations of the Federal Civil Rights Act, supra, but affirmatively alleges the *reason* for the assault upon the prisoner—*for the purpose of extorting confessions and escaping*—and said *reason* is coupled with the further allegation that the *assault was made with the intent of depriving the prisoner of a named secured Federal right.* The Court, in upholding the sufficiency of the Jones Information, and reversing the District Court, held that the *material allegations* in the Information *included* the *intent and purpose* of the accused to impose illegal summary punishment upon the victims to deprive them of their specified constitutional rights. The lower Court's

announced material allegations, necessary and essential to charge a Federal offense under said Federal statute, are totally absent in the Indictment in the instant case. In the face of the existing deficiencies of essential allegations in the Indictment of the instant case, the Court below nevertheless held that the Indictment sufficiently charged a Federal offense under the statute.

CONCLUSION

For the foregoing reasons, this Petition for Writ of Certiorari should be granted.

Respectfully submitted,

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APPENDIX A

Opinion of Court of Appeals Below

(Title Omitted)

Before HUTCHESON, Chief Judge, and HOLMES and RUSSELL, Circuit Judges.

PER CURIAM: What and all that is in question here is whether the district judge erred in dismissing, on the ground put forward by him that the indictment did not charge a federal offense but in effect merely charged the defendant with violations of Florida law, Sec. 905.05, F.S.A., an indictment[1] charging appellee

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[1] The first count, identical in all respects with the others except as to the name of the alleged victim of the deprivation is as follows:

"That heretofore, on, to-wit: the 16th day of October, 1949, in Levy County in the Northern District of Florida, and within the jurisdiction of this Court,

JAMES SHELDON WALKER,

hereinafter called the defendant,
was, pursuant to law, a commissioned officer, agent, and employee of the State of Florida, in charge of State Prison Camp No. 8540, located in Levy County, at or near Bronson, Florida, and was then and there engaged in the discharge of his duties to confine, discipline, supervise, and work prisoners of the State of Florida, committed and assigned, pursuant to law, to said prison camp; that at said time and place one WILLIAM COTTINGHAM was a State prisoner at said prison camp, in charge of, and under the custody and control of the said defendant; that he, the said defendant, then and there, at the time and place aforesaid, did willfully, unlawfully, and wrongfully and in the abuse and excess of his lawful authority, and under color of law, statutes, and regulations of the State of Florida, subject and cause to be subjected the said WILLIAM COTTINGHAM, an inhabitant of the State of Florida, and a prisoner in said prison camp, in the custody and under the control of the said defendant, to the willful deprivation of the rights, recognized, secured, and protected to him, the said WILLIAM COTTINGHAM by the Constitution and laws of the United States, to-wit: the right to be secure in his person, and to be immune from illegal assault and battery by the defendant and by other persons under the defendant's direction and control, and the right not to be assaulted by the said defendant and by other persons under the defendant's control and direction, and the right and privilege not to be sub-

with twenty-eight separate violations of 18 U.S.C. Sec. 242.[2]

The United States, appealing from the order, is here insisting that, in *Jones v. U.S.*, 207 Fed(2) 785, this court sustained as valid an information the same in form and substance, and that the decision in this case is controlled by that decision.

The appellee, vigorously disputing this contention, insists that the information in the Jones case contains essential allegations clearly spelling out the reasons for the alleged assault, coupled with an allegation of specific intent to deny the alleged victim the benefit of a specific federal right, while the indictment here does not.

He insists further that the indictment, like the complaint, dealt with in this court's decision in *Ygelsias v. Gulfstream Park Racing Association,* 201 F(2) 817, is deficient, in that it is based upon generalities and con-

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jected to punishment without due process of law; and the GRAND JURORS aforesaid thereupon, further present and charge that the said defendant, in willful violation and deprivation of the rights of said WILLIAM COTTINGHAM hereinabove alleged, recognized, secured, and protected by the Constitution and laws of the United States, did, on or about the date and at the place aforesaid, within the jurisdiction of this Court, willfully, unlawfully, and wrongfully beat, bruise, wound, lacerate, cut, and injure the person and body of the said WILLIAM COTTINGHAM.

Contrary to the form of the statute in such case made and provided (18 USC 242) and against the peace and dignity of the United States of America."

[2] 18 U.S.C. 242, insofar as material here, provides: "Whoever, under color of any law, statute, ordinance, regulation, or custom, wilfully subjects any inhabitant of any State, Territory, or District to the deprivation of any rights, privileges, or immunities secured or protected by the Constitution or laws of the United States. . . shall be fined not more than $1000 or imprisoned not more than one year, or both."

clusions instead of upon specific factual allegations pointing to an intentional and deliberate denial of specific federal rights.

We do not think so. While the allegations of the information in the Jones case and of the indictment in this one are not verbally identical, they are in legal substance the same. We think it clear, therefore, that sufficiently to withstand a demurrer or motion to dismiss, each count of the indictment charged a federal offense within the scope and meaning of the section, and that it was error to dismiss the indictment.

Appellee's reliance, therefore, on the fact that in the Jones case the information stated the reasons for the alleged assault and the indictment in this case did not, will not do, for in each case the offense consists, not in the reason given by, or charged against, the offender for the unlawful action, the wilful deprivation under the color of state law or rights secured to prisoners by the Federal Constitution, but in the fact of the deliberate and wilful deprivation of such rights by the officer under such color.

It was error to dismiss the indictment. The judgment is REVERSED and the cause is REMANDED with directions to proceed further and not inconsistently herewith.

APPENDIX B

Conflicting Opinion of Companion Case

(Title Omitted)

Before HUTCHESON, Chief Judge, and HOLMES and BORAH, Circuit Judges.

HOLMES, Circuit Judge.

This appeal is from a judgment of dismissal by the district court of a two-count information charging the appellee with the violation of Section 242 of Title 18 of the United States Code, commonly known as the civil rights act. The trial court construed the information to charge the defendant, an officer in a Florida state prison, with having whipped certain prisoners entrusted to his cutody for the purpose and with the intention of disciplining them. The court held that mere disciplinary action by state prison officials was no offense under the federal statute.

On direct appeal to the Supreme Court under Section 3731 of Title 18 of said code, the Government sought reversal of the judgment of dismissal on the ground that the information charged more than the court below construed it to charge. It contended that the information charged the appellee with having willfully extorted confessions of violations of prison rules from the prisoners and having willfully inflicted summary corporal punishment upon them in violation of the laws of Florida and the constitution of the United States. Since the Government's theory of the prosecution was based upon a construction of the information that differed materially from the construction put upon it by the district court, the Supreme Court, for reasons

stated in its opinion reported in 345 U.S. 377, 73 S. Ct. 759, remanded the case to the Court of Appeals for the Fifth Circuit for a construction of the information and such further proceedings as might be appropriate to a review of the judgment on appeal.

The opinion of the district court sets out in full count one of the information; it also states that count two is identical with count one except as to the name of the prisoner and as to the omission of any allegation of an attempt to extort information by coercion. This opinion is reported in 108 F. Supp. 266, and holds that Florida officials, having custody of convicted felons serving prison sentences, violated no federal law by whipping them for disciplinary reasons. The Government concedes that the state has the power to manage the affairs of its penal institutions and to enforce discipline among its prisoners; and we hold that the federal government has no power to control or regulate the internal discipline of the penal institutions of its constituent states. All such powers are reserved to the states, and the 14th Amendment does not authorize Congress to legislate upon such matters. In re Civil Rights Cases, 109 U.S. 3, 3 S.Ct. 18, 27 L. Ed. 835; Siegel v. Ragen, 7 Cir., 180 F.2d 785, certiorari denied 339 U.S. 990, 70 S.Ct. 1015, 94 L.Ed. 1391.

Nevertheless, federal laws may be violated within prison walls, and federal crimes committed therein, as well as elsewhere within the territorial limits of a state; and the fact that state officers are violating state as well as federal laws does not exonerate them from penalties under the latter. Facts are stubborn things when proven or admitted in the disposition of a case; and, paradoxical as it may seem, the defendant was whipping

these prisoners under color of law although doing it in violation of law. Color of law, as used in the statute, means pretense of law: it may include, but does not necessarily mean, under authority of law.

The first half of the first count of the information before us is duplicitous, ambiguous, and argumentative, which renders it or parts of it liable to be stricken out by a motion; but the last sentence in count one expressly alleges that the state officer, under color of state law, did willfully and knowingly strike said prisoner for having escaped and to coerce information concerning alleged offenses, etc., "for the willful purpose and with the intent to impose illegal summary punishment upon, and to deprive the said named prisoner of, his said constitutional rights; in violation of 18 U.S.C. 242." The second count alleges all the preliminary facts pertinent or necessary to the charge, some of which were unnecessary, and then it expressly alleges the crucial facts that the defendant while acting under color of state law as aforesaid, willfully and knowingly with his fists and feet did beat, bruise, batter, and injure the said Aubrey Lee Tuck, for having escaped, etc., "all for the willful purpose and with the intent to impose illegal summary punishment upon and to deprive the said Aubrey Lee Tuck of the aforesaid constitutional rights."

By the same act or series of acts, a person may violate two or more penal statutes, either state or federal. Being equivalent to a demurrer, the motion to dismiss in this case admits that the appellee committed the alleged wrongs and injuries for the purpose and with the intent of depriving the victims of their specified rights under the constitution and laws of the United States. It admits every other well-pleaded allegation of fact in both counts of the information, including the appellee's

official custody of said prisoners, his acting under color of state law, his beating, bruising, battering, and injuring one with a rubber hose for an infraction of prison rules and to coerce information with reference to alleged offenses, and his doing the same as to the other prisoner except as to coercing information and except that the injuries were inflicted with his fists and feet; and, as to both counts, including his intent and purpose to impose illegal summary punishment upon them and to deprive them of their specified constitutional rights.

Thus the appellee was fully informed of the nature and cause of the accusation against him Under Rule 11 of the Rules of Criminal Procedure, 18 U.S.C., he might have plead guilty, not guilty, or, with the consent of the court, *nolo contendere*. Under Rule 12, all other pleas are abolished; so are demurrers and motions to quash; but defenses and objections which heretofore could have been raised before trial by pleas, demurrers, and motions to quash, may be raised only by motions to dismiss or to grant other appropriate relief as provided by said rules.

For the reasons stated, we think the judgment appealed from should be reversed and the cause remanded for further proceedings not inconsistent with this opinion. If and when the motion to dismiss the information shall be over-ruled by the district court, as we have decided it should be, a plea of not guilty by the defendant will join issue upon, and put the Government to the proof of, all the material allegations in the information, including the willful character of the acts of the defendant and his intention to deprive said prisoners of their civil rights under the constitution and laws of the United States. Yick Wo v. Hopkins, 118 U.S. 356, 6 S.Ct. 1064, 30 L.Ed. 220; Ex parte Hull, 312 U.S. 546, 61 S.Ct. 640,

85 L.Ed. 1034; White v. Ragen, 324 U.S. 760, 65 S.Ct. 978, 89 L.Ed. 1348; United States v. Classic, 313 U.S. 299, 327, 61 S.Ct. 1031, 85 L.Ed. 1368; Screws v. United States, 325 U.S. 91, 65 S.Ct. 1031, 89 L.Ed. 1495; Dowd v. State ex rel. Cook, 340 U.S. 206, 71 S.Ct. 262, 95 L.Ed. 215; Williams v. United States, 341 U.S. 97, 103, 71 S.Ct. 576, 95 L.Ed. 774; United States v. Jones, 345 U.S. 377, 378, 73 S.Ct. 759; Pullen v. United States, 5 Cir., 164 F.2d 756; Pulliam v. United States, 10 Cir., 178 F.2d 777; United States v. Lynch, 5 Cir., 189 F.2d 476; United States v. Slobodkin, D.C., 48 F.Supp. 913; United States v. Mertine, D.C., 64 F.Supp. 792; Gordon v. Garrson, D.C., 77 F.Supp. 477; United States v. Miller, D.C. 80 F. Supp. 979; United States v. Universal Milk Bottle Service, Inc., D.C., 85 F.Supp. 622; United States v. Kranz, D.C., 86 F.Supp. 776; Siegel v. Ragen, D.C., 88 F. Supp. 996, affirmed, 7 Cir., 180 F.2d 785, certiorari denied, 339 U.S. 990, 70 S.Ct. 1015, 94 L.Ed. 1391; United States v. Hearne, D.C., 6 F.R.D. 294. Cf. Davis v. Turner, 5 Cir., 197 F.2d 847, 849.

Reversed.

PROOF OF SERVICE

Certificate

I, Wm. C. PIERCE, counsel for James Sheldon Walker, Petitioner herein, and a member of the Bar of the Supreme Court of the United States, hereby certify that on the ___ day of January, 1955, I served, by mail, copies of the foregoing Petition for Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit, on the Respondent United States, by depositing, on said date, in a United States Mail Box, in Tampa, Florida, a copy of said Petition, in a securely sealed envelope, with the requisite Air Mail postage prepaid, and addressed to each of the following: The Solicitor General, Department of Justice, Washington 25, D. C., and Harrold Carswell and Hayford O. Enwall, United States Attorney and Assistant United States Attorney, respectively, for the Northern District of Florida, Federal Building, Gainesville, Florida.

WM. C. PIERCE

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In the Supreme Court of the United States

OCTOBER TERM, 1954

No. 554

JAMES SHELDON WALKER, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINIONS BELOW

The opinion of the Court of Appeals (Pet. 11–19) is reported at 216 F. 2d 683. The opinion of the District Court (R. 9–14) is reported at 121 F. Supp. 458.

JURISDICTION

The judgment of the Court of Appeals was entered on November 16, 1954, and a petition for a rehearing was denied on December 22, 1954. The petition for a writ of certiorari was filed on January 19, 1955. The jurisdiction of this Court is invoked under 28 U. S. C. 1254 (1).

QUESTION PRESENTED

Whether an indictment charging a state prison official with having, under color of law, wilfully subjected a prisoner in his custody to illegal punishment without due process of law, states an offense under the civil rights statute.

STATUTE INVOLVED

Section 242 of Title 18, United States Code, provides in pertinent part:

> Whoever, under color of any law, statute, ordinance, regulation, or custom, willfully subjects any inhabitant of any State, Territory, or District to the deprivation of any rights, privileges, or immunities secured or protected by the Constitution or laws of the United States * * * shall be fined not more than $1,000 or imprisoned not more than one year, or both.

STATEMENT

In a twenty-eight count indictment (see R. 2–6) returned by a grand jury in the Northern District of Florida on September 26, 1952, petitioner was charged with having violated the civil rights statute, 18 U. S. C. 242, in that under color of law he wilfully subjected a named prisoner in his custody and under his control to the deprivation of the following rights secured to such prisoner by the United States Constitution: "the right to be secure in his person, and to be immune from illegal assault and battery by

the defendant and by other persons under the defendant's direction and control, and the right not to be assaulted by the said defendant and by other persons under the defendant's control and direction, and the right and privilege not to be subjected to punishment without due process of law." The deprivation of such rights is alleged to have been accomplished by "willfully, unlawfully, and wrongfully" beating, bruising, wounding, lacerating, cutting and injuring the person and body of the named prisoner (R. 3–4).[1]

On May 24, 1954, the District Court granted petitioner's motion to dismiss the indictment (R. 14–15). On appeal, the Court of Appeals for the Fifth Circuit reversed the judgment of the District Court (Pet. 13) holding *per curiam* that the indictment charged a federal offense.

ARGUMENT

1. Since the grounds upon which the District Court dismissed the indictment were found by the Court of Appeals to have been erroneous,

[1] In addition to the instant indictment, the same grand jury in the Northern District of Florida on September 26, 1952 returned three other indictments, *United States* v. *L. L. Parrish*, No. 993, in 17 counts; *United States* v. *Clyde Markham*, No. 994, in four counts; and *United States* v. *A. R. Bellot*, No. 995, in six counts. All the counts in these four indictments are substantially the same in form and substance, charging Florida Prison Camp Officials with "prison brutality." See the opinion of the District Court at R. 9, 12. In view of the appeal in the instant case, none of the others has yet been tried.

the cause is now in the same posture as if petitioner's motion to dismiss had been overruled at the outset. In such event, he would have had no right to appeal before final judgment. It is possible that the case may be finally decided without ever reaching the legal issues posed by petitioner. And since petitioner challenges the validity of the application of the statute to the circumstances of this case, it is appropriate that the determination, if it is to be made at all, be made after all the proof is in the record and the final judgment entered. In view of the interlocutory character of the judgment below, remanding the case to the District Court for trial, there is no occasion to review it at this time.

2. The decision of the court below is correct and in full accord with *Screws* v. *United States*, 325 U. S. 91, the controlling case under 18 U. S. C. 242. Each count of the indictment, substantially similar to the indictments in *Screws* and other reported cases,[2] charges petitioner, a state prison official, while acting under color of state law, with having *wilfully* subjected the named prisoner in his custody and control to the wilful deprivation of the prisoner's constitutional right to be secure in his person and not to be subjected to punishment without due process of law (R. 3–4). Since

[2] See e. g., *Williams* v. *United States*, 341 U. S. 97; *Lynch* v. *United States*, 189 F. 2d 476 (C. A. 5), certiorari denied, 342 U. S. 831; *Koehler* v. *United States*, 189 F. 2d 711 (C. A. 5), certiorari denied, 342 U. S. 852.

the indictment properly charges that petitioner acted wilfully, it effectively alleges that he acted with the "specific intent to deprive a person of a federal right made definite by decision or other rule of law," *Screws,* 325 U. S. at 103. The indictment thus charges that petitioner's purpose was plain and that "the deprivation of the constitutional right [was] willful." *Williams* v. *United States,* 341 U. S. 97, 101. Whether or not petitioner acted wilfully and whether or not he acted under color of law are questions of fact to be determined by the jury pursuant to instructions which conform to the ruling in *Screws,* 325 U. S. at 106–107; see *Williams* v. *United States,* 341 U. S. 97, 99, 100.

That the indictment in the case at bar does not specify the reasons why petitioner wilfully mistreated his victims is immaterial. Motive is not an element of the offense defined in Section 242. As stated by the court below (Pet. 13):

> * * * the offense consists, not in the reason given by, or charged against, the offender for the unlawful action, the wilful deprivation under the color of state law or [sic] rights secured to prisoners by the Federal Constitution, but in the fact of the deliberate and wilful deprivation of such rights by the officer under such color.

Therefore, what the victim did or did not do to provoke the mistreatment he suffered is of no consequence, so far as the indictment is concerned.

At the trial, the victim's conduct or misconduct might be relevant in determining provocation and therefore of assistance in determining whether or not petitioner acted wilfully (*cf. Screws,* 325 U. S. at 107). The indictment itself, however, need not, and indeed should not, set forth evidence or attempt to negative every possible defense which petitioner might assert.

No question is presented concerning the power or authority of the state through its prison officers to impose discipline upon convicts in its own institutions. But a person convicted of a state crime does not thereby lose all rights secured to him by the United States Constitution; he is not, by virtue of his conviction, divested of all his rights so that the state executive officers having him in their custody are free to inflict any further punishment or indignity they may by whim or caprice decide upon. As stated in *Coffin* v. *Reichard,* 143 F. 2d 443, 445 (C. A. 6), a habeas corpus proceeding based upon allegations of physical mistreatment by officials of a penal institution:

> A prisoner retains all the rights of an ordinary citizen except those expressly, or by necessary implication, taken from him by law. While the law does take his liberty and imposes a duty of servitude and observance of discipline for his regulation and that of other prisoners, it does not deny his right to personal security against unlawful invasion.

United States v. *Jones,* 207 F. 2d 785, 786–787 (C. A. 5). *Cf. Ex parte Hull,* 312 U. S. 546, 549; *Dowd* v. *Cook,* 340 U. S. 206; *Lynch* v. *United States,* 189 F. 2d 476, 479 (C. A. 5), certiorari denied, 342 U. S. 831. See *Screws* v. *United States,* 325 U. S. 91, 106.

Nor is there any doubt of the applicability of Section 242 to misconduct which may also violate state law. As was stated in *Screws,* 325 U. S. at 108:

> The statute [now Sec. 242] does not come into play merely because the federal law or the state law under which the officer purports to act is violated. It is applicable when and only when someone is deprived of a federal right by that action. The fact that it is also a violation of state law does not make it any the less a federal offense punishable as such. Nor does its punishment by federal authority encroach on state authority or relieve the state from its responsibility for punishing state offenses.

Willful and brutal violations of a fundamental constitutional right by one acting under color of law is charged in the indictment; the government should be permitted to prove the charge.

CONCLUSION

The judgment below is correct, there is no conflict of decisions, and there is no unsettled question of importance involved. The petition for a writ of certiorari should be denied.

Respectfully submitted.

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